

IN THE CIRCUIT COURT OF FRANKLIN COUNTY
STATE OF MISSOURI

STATE OF MISSOURI, ex rel.)	
JEREMIAH W. (JAY) NIXON,)	
Attorney General,)	
)	
Plaintiff,)	
)	
vs.)	Case No.
)	
RICHARD SCHUSTER)	Division No.
2900 East Route M)	
Hartsburg, MO 65039)	
)	
Defendant.)	

**PETITION FOR PERMANENT
INJUNCTION AND OTHER RELIEF**

Plaintiff, the State of Missouri, by and through its Attorney General and Assistant Attorney General, states in support of its Petition for Permanent Injunction and Other Relief (hereinafter "Petition"):

PARTIES AND JURISDICTION

1. Jeremiah W. (Jay) Nixon is the duly elected and acting Attorney General of the State of Missouri and brings this action in his official capacity pursuant to §§407.020, and 407.100, RSMo. 2000.¹

2. Defendant Richard Schuster is an individual whose last known address is 2900 East Route M, Hartsburg, Missouri 65039.

¹ Unless otherwise noted all references to statutes are to Missouri Revised Statutes 2000.

3. This Court has subject matter jurisdiction over this matter pursuant to §§407.020 and 407.100, which allow the Attorney General to seek injunctive relief, restitution, penalties and other relief in Missouri circuit courts for violations of the Missouri Merchandising Practices Act, Chapter 407.

4. This Court has personal jurisdiction over the defendant because he is a resident of the State of Missouri.

5. Venue is proper in this Court pursuant to §§407.020 and 407.100 because acts which are alleged to violate Chapter 407 occurred in Franklin County, Missouri.

MERCHANDISING PRACTICES ACT

6. Section 407.020 provides, in pertinent part:

1. The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce . . . is declared to be an unlawful practice. . . Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement or solicitation.

7. Section 407.100, provides:

1. Whenever it appears to the Attorney General that a person has engaged in, is engaging in, or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, he may seek and obtain, in an action in a circuit court, an injunction prohibiting such person from continuing such methods, acts, uses, practices, or solicitations, or any combination thereof, or engaging therein, or doing anything in furtherance thereof.

2. In any action under subsection 1 of this section, and pursuant to the provisions of the Missouri Rules of Civil

Procedure, the attorney general may seek and obtain temporary restraining orders, preliminary injunctions, temporary receivers, and the sequestering of any funds or accounts if the court finds that funds or property may be hidden or removed from the state or that such orders or injunctions are otherwise necessary.

3. If the court finds that the person has engaged in, is engaging in, or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, it may make such orders or judgments as may be necessary to prevent such person from employing or continuing to employ, or to prevent the recurrence of, any prohibited methods, acts, uses, practices or solicitations, or any combination thereof, declared to be unlawful by this chapter.

4. The court, in its discretion, may enter an order of restitution, payable to the state, as may be necessary to restore to any person who has suffered any ascertainable loss, including but not limited to, any moneys or property, real or personal, which may have been acquired by means of any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter. It shall be the duty of the attorney general to distribute such funds to those persons injured.

5. The court, in its discretion, may appoint a receiver to insure the conformance to any orders issued under subsection 3 of this section or to insure the payment of any damages ordered under subsection 4 of this section.

6. The court may award to the state a civil penalty of not more than one thousand dollars per violation; except that, if the person who would be liable for such penalty shows, by a preponderance of the evidence, that a violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, no civil penalties shall be imposed.

FACTS

8. Plaintiff incorporates by reference paragraphs 1. through 7. above as if fully set forth herein.

9. Defendant Schuster is, or has been, engaged in the business of construction and remodeling of residences and outbuildings.

10. On or about June 23, 1998, Defendant Schuster met with David Ulrich at the latter's home at 7024 Highway 100, Washington, Missouri 63090 to discuss a barn that Ulrich wanted to have built on property owned by Ulrich and his wife, Debbie Westrich.

11. When Defendant Schuster advised Ulrich that Schuster would complete the barn within ninety (90) days, Ulrich paid Schuster \$2,200.00 as a down payment. See copy of check, attached hereto as Exhibit A and incorporated herein by reference.

12. On or about June 29, 1998, Debbie Westrich executed a contract with Defendant Schuster to construct a barn on property for the total price of \$19,200.00 See copy of contract attached hereto as Exhibit B and incorporated herein by reference.

13. In addition to the \$2,000.00 down payment on June 23, 1998, Ulrich made the following payments to Schuster:

June 29, 1998	\$3,000.00
July 18, 1998	\$5,000.00
August 18, 1998	\$ 425.00
August 24, 1998	\$7,100.00

See copies of checks attached hereto as Exhibits C, D, E and F respectively, and incorporated herein by reference.

14. On October 30, 1998 Defendant Schuster pled guilty in the Circuit Court of St. Louis County, Missouri to two counts of Unlawful Merchandising Practices. See certified copies

of Plea Agreement, Plea of Guilty, and Judgment and Sentence in case styled State of Missouri v. Richard Schuster, 99CR6523, attached hereto as Exhibit G and incorporated herein by reference.

15. Schuster had been indicted by a St. Louis County grand jury on nine counts of Unlawful Merchandising Practices. See certified copy of Indictment in case styled State of Missouri vs. Richard Schuster, attached hereto as Exhibit G and incorporated herein by reference.

16. Pursuant to the terms of the Plea Agreement, Schuster paid \$11,520.00 in restitution for consumers and was ordered to pay a fine of \$1,280.00. Id.

17. Defendant Schuster failed to complete Ulrich's barn within ninety days as promised.

18. Defendant Schuster promised Ulrich that Schuster would work on the barn on October 10, 11 and 25, but Schuster failed to appear on those days.

19. On or about November 4, 1998 Defendant Schuster promised Ulrich that Schuster would provide a revised completion date but Schuster never followed through on his promise.

20. On or about November 23, 1998 Defendant Schuster promised Ulrich that Schuster would work on the barn on November 26 and 27.

21. Defendant Schuster failed to work on Ulrich's barn on November 26 and 27.

22. On or about December 13, 1998 Defendant Schuster informed Ulrich that Schuster had spent all of the money from the August 24 payment of \$7,100.00 and therefore could not pay for materials.

23. On or about December 13, 1998 Defendant Schuster asked Ulrich to renegotiate the price of the contract and said he would need an additional \$5,000.00 to complete the job; Ulrich refused to renegotiate.

24. On or about December 19, 1998 after having promised to work on Ulrich's barn on that day, Defendant Schuster promised Ulrich that Schuster would work on Ulrich's barn on December 26 and 27.

25. Defendant Schuster failed to work on Ulrich's barn on December 26 and 27.

26. On or about January 22, 1999 Defendant Schuster promised Ulrich that Schuster would work in Ulrich's barn on January 23 and 24 "rain or shine."

27. Defendant Schuster failed to work on Ulrich's barn on January 23 and 24.

28. On or about February 10, 1999 Defendant Schuster promised Ulrich that Schuster would work on Ulrich's barn "for sure" on February 13 and 14.

29. Defendant Schuster failed to work on Ulrich's barn on February 13 and 14.

30. On or about May 13, 1999 Defendant Schuster promised Ulrich that Schuster would complete the barn in sixty days.

31. Defendant Schuster failed to complete the barn in sixty days.

32. On or about May 21, 1999 Defendant Schuster promised Ulrich that Schuster would work on Ulrich's barn on May 22 and 23.

33. Defendant Schuster failed to work on Ulrich's barn in May 22 and 23.

34. On or about June 6, 1999 Defendant Schuster deposited on Ulrich's property approximately 12 board (46") in nine or ten foot lengths. Schuster told Ulrich that Schuster's boss had given the wood to Schuster.

35. On or about June 6, 1999 Defendant Schuster promised Ulrich that Schuster would return with more wood on June 7.

36. Defendant Schuster failed to return on June 7.

37. On or about June 20, 1999 Defendant Schuster apologized to Ulrich for failing to appear as promised and again promised to return with more wood on June 21.

38. Defendant Schuster failed to return on June 21.

39. On or about June 26, 1999 Defendant Schuster deposited approximately 15 1" x 6" boards on Ulrich's property and promised to return the next day and again promised to complete the barn within the sixty-day period.

40. Defendant Schuster failed to return on June 27.

41. On or about July 13, 1999 Ulrich informed Defendant Schuster that the sixty-day period had expired. Defendant Schuster responded, "Well, I guess you're going to sue me. I'll see you in court."

42. Defendant Schuster failed to complete the barn.

43. Upon information and belief, Plaintiff submits that the work Defendant Schuster performed on Ulrich's barn is valued at \$12,900.

44. Upon information and belief, Plaintiff submits that the work defendant Schuster performed is so defective that Ulrich was estimated to require an expenditure of \$13,950.00 in order to repair Schuster's faulty work.

45. Upon information and belief, Plaintiff submits that much of the lumber Defendant Schuster used to partially construct Ulrich's barn had been used previously, and Schuster did not disclose that fact to Ulrich.

46. Upon information and belief, Plaintiff submits that Defendant Schuster installed in Ulrich's barn a door that was taken from Zykan Homes without permission and Schuster did not disclose that fact to Ulrich.

VIOLATIONS OF MERCHANDISING PRACTICES ACT

COUNT I

47. Plaintiff incorporates by reference Paragraphs 1. through 47. above as if fully set forth herein.

48. Defendant Richard Schuster employed misrepresentation and/or deception and/or false promise in connection with the sale of merchandise in trade or commerce on at least two occasions by telling David Ulrich that Schuster would complete a barn on Ulrich's property within a ninety or sixty-day time period and then failing to complete the structure.

COUNT II

49. Defendant Richard Schuster employed misrepresentation and/or deception and/or false promise in connection with the sale of merchandise in trade or commerce by telling David Ulrich that Schuster would complete a barn on Ulrich's property for a price of \$19,200.00 and then failing to complete the barn and failing to refund money to Ulrich.

COUNT III

50. Defendant Richard Schuster employed misrepresentation and/or deception and/or false promise in connection with the sale of merchandise in trade or commerce by telling David Ulrich on several occasions that Schuster would work on Ulrich's barn on particular days and then failing to appear on those days.

COUNT IV

51. Defendant Richard Schuster employed deception and/or misrepresentation and/or unfair practice and/or the concealment, suppression, or omission of material fact in connection with the sale of merchandise in trade or commerce by employing lumber for Ulrich's barn that had been used previously and failing to disclose that fact to David Ulrich.

COUNT V

52. Defendant Richard Schuster employed deception and/or misrepresentation and/or unfair practice and/or the concealment, suppression, or omission of material fact in the connection with the sale of merchandise in trade or commerce by employing for Ulrich's barn a door that had been taken from Zykan Homes without permission and failing to disclose that fact to David Ulrich.

RELIEF REQUESTED

WHEREFORE, in view of the foregoing, Plaintiff requests this Court to grant the following relief:

53. An Order of this Court finding that Defendant Schuster has violated the provisions of §407.020;

54. A permanent injunction issued pursuant to §407.100 prohibiting Defendant Schuster from employing the methods, acts, uses or practices listed above;

55. An Order permanently enjoining Defendant Schuster from owning, managing or operating a residential construction or remodeling business, or engaging in the business of residential construction or remodeling, except as an employee of a person who is engaged in the

business of residential construction or remodeling and who is in good standing in the State of Missouri;

56. An Order awarding restitution to David Ulrich for ascertainable loss suffered as a result of Defendant Schuster's violations of §407.020;

57. An Order assessing civil penalties of not more than \$1,000.00 per violation pursuant to §407.100.6 for each violation of §407.020 committed by Defendant Schuster in the course of his dealings with David Ulrich;

58. An Order awarding to Plaintiff the costs of investigation and prosecution of this action pursuant to §407.130;

59. An Order awarding to Plaintiff an additional amount equal to ten percent of the total restitution pursuant to §407.140.3;

60. An Order assessing court costs against Defendant Schuster; and

61. An Order containing such additional relief as may be just and appropriate in this action.

Respectfully submitted,

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